

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOVAN FLUDD,

Plaintiff,

-vs-

BRIAN FISCHER, et al.,

Defendants.

**RULE 56 STATEMENT
10-CV-6603**

Defendants by their attorney, Eric Schneiderman, Attorney General of the State of New York, Gary M. Levine, Assistant Attorney General, of counsel, as and for a Rule 56 Statement herein submit that there are no genuine issues to be tried with regard to the following material facts:

1. Plaintiff, an inmate, entered Department of Correctional Services (DOCS) on April 17, 2006 after a conviction of falsifying documents (involving the judges and prosecutors involved in his criminal prosecution)(complaint par. 16).
2. When plaintiff was sent to DOCS, the trial judge, Hon. Arlene Goldberg, ordered DOCS to impose various restrictions on plaintiff, including how to handle plaintiff's mail (complaint par. 17).
3. Goldberg revised the orders on or about September 28, 2006 (complaint par. 35, 37).
4. DOCS enforced Judge Goldberg's orders (complaint par. 18, 38).
5. On March 18, 2008, Judge Goldberg's orders were vacated (complaint par. 47).

Fludd v. Goldberg, 51 A.D.3d 153 (1st Dept. 2008).

6. On March 20, 2006, Deputy Commissioner Annucci directed Kirkpatrick to draft a administrative segregation recommendation which was done by Captain Noeth (complaint par. 4, 51).
7. Defendant Drown (Brown)¹ conducted an administrative segregation hearing which concluded on April 1, 2008 (complaint par. 60, 145).
8. At the hearing, it was determined that plaintiff was to remain in administrative segregation and this decision was affirmed by Bezio (complaint par. 114-15).
9. Plaintiff brought an Article 78 action contesting the administrative segregation decision which was denied (complaint par. 116-19; Levine declaration for the Article 78 application, response and briefs). Fludd v. NYS Department of Correctional Services, 62 A.D.3d 1149 (3rd Dept. 2009).
10. Pursuant to periodic reviews, plaintiff remained in administrative segregation (complaint par. 144-58).
11. On April 10, 2008, April 17, 2008 and June 3, 2008, Superintendent Kirkpatrick imposed correspondence restrictions (complaint par. 180-92).
12. In June and July 2009 all inmates in restrictive housing at Wende were given limited law library access (complaint par. 198-209).
13. While in administrative segregation, plaintiff was placed in a poorly ventilated cell (complaint par. 217-18, 224, 258), that had plexiglass placed on the door, without

¹ The record refers to the hearing officer as both Drown and Brown. See page 15, note 7 to petitioner's brief).

due process (complaint par. 213, 216, 257) and the prison was unsanitary
(complaint par. 219, 220, 259) all of which exacerbated plaintiff's asthma condition
(complaint par. 221).

Dated: January 12, 2011
Rochester, New York

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CERTIFICATE OF SERVICE

I certify that on January 12, 2011, I electronically filed the foregoing Rule 56 Statement with the Clerk of the District Court using CM/ECF system, which sent notification of such filing to the following:

1. n/a

And, I hereby certify that I have mailed, by the United States Postal Service, the document to the following non-CM/ECF participant(s):

1. Jovan Fludd, 06A2055
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